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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ASETEK DANMARK A/S,

Plaintiff,

v.

NEWEGG INC., NEWEGG NORTH
AMERICA INC.,

Defendants.

CASE NO. 3:16-CV-7068-JST

**JOINT CASE MANAGEMENT
STATEMENT AND [PROPOSED]
ORDER**

Date: March 22, 2017
Time: 2:00 p.m.
Courtroom: 9, 19th Floor
Judge: Honorable Jon S. Tigar

In accordance with Federal Rule of Civil Procedure 26(f), Civil Local Rule 16-9, Patent Local Rule 2-1, the Standing Order for All Judges of the Northern District of California – Contents of Joint Case Management Statement, the Clerk’s Initial Case Management Conference Notice (ECF No. 17), and the Court’s Order continuing the CMC (ECF No. 29), Plaintiff Asetek Danmark A/S (“Asetek”) and Defendants Newegg Inc. and Newegg North America Inc. (collectively, “Newegg”) hereby submit this Joint Case Management Statement and Proposed Order.

1. Jurisdiction and Service

This Court has subject matter jurisdiction over this patent infringement action under 28 U.S.C. §§ 1331 and 1338(a) because the action arises under the U.S. Patent Act, 35 U.S.C. § 101 et seq., including 35 U.S.C. §§ 271 and 281. No party contests personal jurisdiction or service.

2. Facts

Asetek alleges that Newegg has been selling, and facilitating the sales by third parties, through Newegg.com of certain Cooler Master-branded products previously held by this Court to infringe claims 1-15, 17, and 18 of U.S. Patent No. 8,245,764 (the ’764 Patent) and claims 14, 15, and 17-19 of U.S. Patent No. 8,240,362 (the ’362 Patent). This Court previously enjoined CMI, and anyone in active concert therewith, “from making, using, offering for sale, or selling in the United States, or importing into the United States, or causing to be made, used, offered for sale, or sold in the United States, or imported into the United States, the Infringing Products.”

Asetek informed Newegg of this Court’s holding of infringement and the permanent injunction via letter in October 2015 and again in November 2015. Newegg contends the letters were misaddressed and disputes receiving these letters.

The products at issue continued to be sold on Newegg.com after Asetek sent its letters to Newegg. Asetek seeks damages for Newegg’s alleged infringement, contends Newegg’s alleged infringement has been willful, and seeks a permanent injunction.

3. Legal Issues

The principal disputed legal issues are:

- The extent of Newegg’s direct infringement of the Patents-in-Suit;

- Whether Newegg infringes any of the Patents-in-Suit indirectly (35 U.S.C. § 271(b/c));
- Whether Asetek is entitled to damages as a result of the infringement of any or all of the Patents-in-Suit, and if so, the amount, and whether the damages should be trebled for alleged willful infringement (35 U.S.C. §§ 284, 289);
- Whether Newegg should be permanently enjoined from selling infringing products through Newegg.com;
- Whether this case is exceptional (35 U.S.C. § 285);
- Whether Newegg's infringement has been willful;
- Whether the Patents-in-Suit are valid; and
- Whether Asetek has previously recovered damages for the products sold on Newegg.com.

The parties reserve the right to raise additional factual or legal issues that may arise through the course of this action.

4. Motions

Asetek may seek a preliminary injunction. Asetek has deferred filing a motion seeking such relief because Newegg has represented that it has self-enjoined and the parties are actively attempting to settle this dispute. If the case progresses, the parties further anticipate moving for summary judgment and may file other dispositive and non-dispositive motions as appropriate as the case progresses.

5. Amendment of Pleadings, Addition of Parties

The parties agree that the deadline for joining parties and amending the pleadings should be in accordance with the proposed schedule set forth in Appendix A.

6. Evidence Preservation

The parties have reviewed the Northern District of California's Guidelines for Discovery of Electronically Stored Information ("ESI") and Checklist for Rule 26(f) Meet and Confer Regarding ESI, including those portions related to evidence preservation. Additionally, the parties met and conferred at their Rule 26(f) conference regarding evidence preservation. Each party has implemented a litigation hold with respect to all ESI and hardcopy documents and media identified

as relevant to this action. The parties agree that the ESI described in Schedule A to the Delaware ESI Default Standard need not be preserved or produced in discovery.

7. Initial Disclosures

Asetek served its initial disclosures on March 8, 2017, as required by the Federal Rules of Civil Procedure. Newegg served its initial disclosures on March 10, 2017.

8. Discovery

A. Protective Order

The NDCA form interim Protective Order on the Court's website will govern this action unless the Court enters a different Protective Order (per Patent L.R. 2-2).

B. Limits to Discovery Requests and Depositions

At this time, the parties do not anticipate a need to limit or modify the limits imposed by the Federal Rules of Civil Procedure.

C. Electronically Stored Information (ESI)

The parties agree that documents shall be produced in full-text searchable single-page TIFF format images or PDFs with unitizing load files if the size of the production exceeds 30 MB, and that reasonable efforts will be made to suppress duplicates and near duplicates. The parties agree that all documents will be exchanged on discs, by email, or other digital storage medium (including but not limited to "zip" files and FTP transfer). To the extent either party believes, on a case-by-case basis, that documents should be produced in an alternative format, the parties have agreed that they will meet and confer in good faith concerning such alternative arrangements. The parties agree to the Model Stipulated Order re: Discovery of Electronically Stored Info (Patent Cases) and will submit a proposed order to that effect in accordance with the due dates set forth in Appendix A.

D. Electronic Service

The parties agree to accept service by email. Each counsel will establish an email distribution list accessible through a single external email address. Service by email will be treated as service by hand delivery. The parties agree that service by email by 11:59 p.m. Pacific time on a given day will be treated as service by personal delivery that day.

1 The parties further agree that documents filed publicly through the Court's ECF system need
 2 not be separately served by email or otherwise and that ECF filing constitutes personal service as of
 3 the date and time such document was filed. The parties agree that documents filed under seal or
 4 manually must be served by email or other electronic means including FTP transfer immediately
 5 following a related ECF filing, and that the email service of such documents shall relate back to the
 6 time of the related ECF filing.

7 **E. Privilege Logs**

8 The parties agree that privileged communications and documents covered by work product
 9 protection that are dated on or after December 9, 2016, need not be included in any privilege log.
 10 This applies only to the parties and their counsel of record in this action or their in-house counsel. In
 11 addition, nothing herein precludes any party from arguing any alleged waiver of the attorney-client
 12 privilege by the other party.

13 The parties further agree that Pursuant to Fed. R. Evid. 502(d), the production of a privileged
 14 or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege
 15 or protection from discovery in this case or in any other federal or state proceeding. For example,
 16 the mere production of privileged or work-product-protected documents in this case as part of a mass
 17 production is not itself a waiver in this case or in any other federal or state proceeding.

18 **F. Expert Discovery**

19 The parties agree that the protections provided in Federal Rule of Civil Procedure
 20 26(b)(4)(B) and (C) will apply equally to expert declarations as they do to expert reports, including
 21 both drafts of declarations and communications related to declarations. In accordance with Federal
 22 Rule of Civil Procedure 26(b)(4), draft expert reports, notes, outlines, and any other writings leading
 23 up to an expert's final report(s) are exempt from discovery. In addition, all communications with and
 24 all materials generated by an expert with respect to his or her work on this action are exempt from
 25 discovery unless considered by the expert in forming his or her opinions. If an expert produces a
 26 report, the expert must produce his or her final report and all materials which he or she considered
 27 (other than documents produced in discovery).
 28

9. Class actions

Not applicable here.

10. Related cases

This case is related to *Asetek Danmark A/S v. CMI USA, Inc.*, No. 13-cv-457-JST (N.D. Cal.), in which this Court held certain Cooler Master-branded products infringed several claims of Asetek's '764 and '362 Patents. This Court also enjoined the sale in, and import into, the United States of these products.

The '764 and '362 patents are also at issue in *Asia Vital Components Co. Ltd. v. Asetek Danmark A/S*, No. 3:16-CV-7160-JST (N.D. Cal.) (also assigned to a CMC at the same time as the instant case), and were at issue in *Asetek Holdings, Inc. v. Coolit Sys. Inc.*, No. 3:12-CV-4498-EMC (N.D. Cal.) (closed).

The patents-in-suit have also been the subject of proceedings in the United States Patent and Trademark Office's Patent Trial and Appeal Board and the Federal Circuit.

11. Relief

Asetek seeks entry of judgment finding that Newegg infringes the Patents-in-Suit, both directly and indirectly. Asetek seeks monetary damages, including damages based on an amount no less than a reasonable royalty, and enhanced damages based upon Asetek's allegation of willful infringement. Asetek further seeks a judgment that this case is exceptional and an award of Asetek's costs and reasonable attorneys' fees. Asetek seeks other relief available under applicable law.

12. Settlement and ADR

The parties discussed ADR in February 2017, and have agreed to participate in a Magistrate Judge Settlement Conference. As required by ADR L.R. 3-5, the parties have reviewed the Court's ADR handbook, discussed the available ADR procedures and considered whether this case would benefit from an ADR procedure.

13. Consent to a Magistrate Judge for All Purposes & Other References

The parties do not consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment.

14. Other References

The parties agree that at this time this case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

Given the early stage of this case and the fact that discovery has just begun, the Parties have not at this time identified issues that can be narrowed by motion or stipulation, although the Parties do anticipate filing dispositive motions seeking to narrow the issues for trial. The Parties may also be able to narrow certain issues via stipulated facts once discovery has progressed.

16. Expedited Trial Procedure

The parties do not propose that this case proceed under the Expedited Trial Procedure of General Order 64.

17. Scheduling

The parties' respective scheduling proposals are set forth in the chart attached hereto as Appendix A.

18. Trial

The parties request trial by jury and anticipate the trial will require approximately 4 court days.

19. Disclosure of Non-party Interested Entities or Persons

The parties have filed Certifications of Interested Entities or Persons as required by Civil Local Rule 3-15. ECF No. 4 (Asetek's certification); ECF No. 31 (Newegg's certification).

Regarding Asetek, the undersigned certifies that as of this date, the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

- Asetek Holdings, Inc.
- Asetek A/S
- Sunstone Technology Ventures.

1 Regarding Newegg, the undersigned certifies that as of this date, the following
2 listed persons, associations of persons, firms, partnerships, corporations (including
3 parent corporations) or other entities (i) have a financial interest in the subject matter
4 in controversy or in a party to the proceeding, or (ii) have a non-financial interest in
5 that subject matter or in a party that could be substantially affected by the outcome of
6 this proceeding:

- 7 • Newegg Inc.

8 **20. Professional Conduct**

9 The parties have confirmed that all attorneys of record for the parties have reviewed the
10 Guidelines for Professional Conduct for the Northern District of California.

11 **21. Other Matters**

12 Pursuant to Patent Local Rule 2-1, the parties have also met and conferred regarding
13 additional matters. Given the Court's familiarity with the patents-in-suit following the *Asetek v.*
14 *CMI USA, Inc.* jury trial, the parties are not planning to present a tutorial, unless the Court wishes
15 one. The parties do not expect to present any live testimony at the claim construction hearing. At
16 this time, the parties reasonably estimate that the claim construction hearing will take three hours or
17 less.

Appendix A:
Proposed Case Schedule

Event	Applicable rule or order	Order or Agreed Date/Deadline
Initial Case Management Conference	ECF No. 29	March 22, 2017, 2:00 p.m.
Stipulated ESI Order		March 29, 2017
Infringement Contentions & Accompanying Production	Pat. L.R. 3-1, 3-2 Not later than 14 days after the Initial Case Management Conference	April 5, 2017
Invalidity Contentions & Accompanying Production	Pat. L.R. 3-3, 3-4 Not later than 45 days after service upon it of the “Disclosure of Asserted Claims and Infringement Contentions”	May 19, 2017
Exchange of Terms for Construction	Pat. L.R. 4-1 Not later than 14 days after service of the “Invalidity Contentions” pursuant to Patent L.R. 3-3	June 2, 2017
Exchange of Preliminary Constructions and Extrinsic Evidence	Pat. L.R. 4-2 Not later than 21 days after the exchange of the lists pursuant to Patent L.R. 4-1	June 23, 2017

Damages Contentions	Pat. L.R. 3-8 Not later than 50 days after service of the “Invalidity Contentions” pursuant to Patent L.R. 3-3	July 7, 2017
Joint Claim Construction & Prehearing Statement	Pat. L.R. 4-3 Not later than 60 days after service of the “Invalidity Contentions”	July 18, 2017
Deadline to Amend Pleadings Without Leave of Court		July 26, 2017
Responsive Damages Contentions	Pat. L.R. 3-9 Not later than 30 days after service of the “Damages Contentions” pursuant to Patent L.R. 3-8.	August 4, 2017
Completion of Claim Construction Discovery	Pat. L.R. 4-4 Not later than 30 days after service and filing of the Joint Claim Construction and Prehearing Statement	August 17, 2017
Asetek’s Opening Claim Construction Brief	Pat. L.R. 4-5(a) Not later than 45 days after serving and filing the Joint Claim Construction and Prehearing Statement	Sept. 1, 2017
Newegg’s Responsive Claim Construction Brief	Pat. L.R. 4-5(b) Not later than 14 days after service of an opening brief	Sept. 15, 2017

Asetek's Reply Claim Construction Brief	Pat. L.R. 4-5(c) Not later than 7 days after service of a responsive brief	Sept. 22, 2017
Claim Construction Hearing	Pat. L.R. 4-6 Subject to the convenience of the Court's calendar, two weeks following submission of the reply brief specified in Patent L.R. 4-5(c)	Oct. 5, 2017, 2:00 p.m. (or at the Court's convenience)
Close of Fact Discovery		Dec. 1, 2017
Opening Expert Reports		Jan. 12, 2018
Rebuttal Expert Reports		Jan. 26, 2018
Close of Expert Discovery		Feb. 9, 2018
Opening Summary Judgment Briefs		March 2, 2018
Responsive Summary Judgment Briefs		March 16, 2018
Reply Summary Judgment Briefs		March 23, 2018
Summary Judgment Hearing		April 5, 2018, 2:00 p.m. (or at the Court's convenience)
Pretrial Conference		April 27, 2018, 2:00 p.m. (or at the Court's convenience)

Jury Trial		May 21, 2018, 8:30 a.m. (or at the Court's convenience)
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2 Dated: March 15, 2017

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

3
4 By: /s/ Jacob A. Schroeder
Jacob A. Schroeder

5
6 *Attorneys for Plaintiff*
Asetek Danmark A/S

7
8 Dated: March 15, 2017

LITIGATION LAW GROUP

9
10 By: /s/ Gordon M. Fauth, Jr.
Gordon M. Fauth, Jr.

11 *Attorneys for Defendants*
Newegg Inc. and Newegg North America Inc.

12
13 **ATTESTATION**

14 I, Jacob A. Schroeder, hereby attest that concurrence in the filing of the document has been
15 obtained from counsel for Newegg Inc. and Newegg North America Inc.

16
17 By: /s/ Jacob A. Schroeder
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22 *Attorneys for Plaintiff*
Asetek Danmark A/S

CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is hereby APPROVED as the Case Management Order for this case and all parties shall comply with its provisions.

IT IS SO ORDERED.

Dated: _____

Honorable Jon S. Tigar

United States District Judge